

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DANIEL C.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. 3:20-cv-05584-BAT

**ORDER AFFIRMING THE  
COMMISSIONER'S DECISION AND  
DISMISSING THE CASE WITH  
PREJUDICE**

Plaintiff appeals the denial of his applications for Supplemental Security Income and Disability Insurance Benefits. He contends the ALJ erred by (1) finding carpal tunnel syndrome to be a non-severe impairment and therefore failing to assess work restrictions arising from the impairment; (2) failing to provide specific and legitimate reasons for discounting the opinion of examining psychologist Dan Neims, Psy.D.; (3) failing to explain a departure from the opinion of examining psychiatrist, April DeLira, M.D., despite finding the opinion to be persuasive; (4) failing to discuss the opinions of examining orthopedic surgeon, Lynn Staker, M.D.; (5) failing to explain the departure from the non-examining opinion of Derek Leinenbach, M.D., despite finding the opinion to be persuasive; and (6) failing to provide specific, clear and convincing reasons for discounting plaintiff's symptom allegations. Dkt. 9. As discussed below,

1 the Court **AFFIRMS** the Commissioner’s final decision and **DISMISSES** the case with  
2 prejudice.

### 3 **BACKGROUND**

4 Plaintiff is currently 46 years old, attended some high school, and has worked primarily  
5 as a tow truck driver. Tr. 44–45. In October 2017, he applied for benefits, alleging disability as  
6 of April 13, 2017. Tr. 273–80. In May 2019, the ALJ conducted a hearing. The ALJ found that  
7 plaintiff met the insured status requirements through June 30, 2022, had not engaged in  
8 substantial gainful activity since the alleged onset date in April 2017, and has the severe  
9 impairments of major depressive disorder, left elbow degenerative joint disease, left wrist  
10 degenerative joint disease, degenerative disc disease of the cervical spine, degenerative disc  
11 disease of the lumbar spine, and fibromyalgia. Tr. 17–18. The ALJ assessed a residual functional  
12 capacity (“RFC”) of sedentary work with additional physical and mental limitations. Tr. 22. The  
13 ALJ found that plaintiff could not perform past relevant work but could perform jobs that exist in  
14 significant numbers in the national economy. Tr. 28. The ALJ therefore found plaintiff to be not  
15 disabled. Tr. 29–30. The Appeals Council denied plaintiff’s request for review so the ALJ’s  
16 decision is the Commissioner’s final decision. Tr. 12–14.

### 17 **DISCUSSION**

18 The Court will reverse the ALJ’s decision only if it was not supported by substantial  
19 evidence in the record as a whole or if the ALJ applied the wrong legal standard. *Molina v.*  
20 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). The ALJ’s decision may not be reversed on account  
21 of an error that is harmless. *Id.* at 1111. Where the evidence is susceptible to more than one  
22 rational interpretation, the Court must uphold the Commissioner’s interpretation. *Thomas v.*  
23 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

1 Plaintiff has failed to demonstrate that the ALJ's decision was unreasonable, unsupported  
2 by substantial evidence, or the result of harmful legal error with respect to evaluating carpal  
3 tunnel syndrome, the medical evidence, and plaintiff's testimony. The Court affirms the  
4 Commissioner's final decision and dismisses the case with prejudice.

### 5 **1. Carpal Tunnel Syndrome as Non-Severe Impairment**

6 Plaintiff contends that the ALJ harmfully erred by determining that plaintiff's right arm  
7 carpal tunnel syndrome was not a severe impairment. Dkt. 9, at 2–4. The Court disagrees.

8 The ALJ acknowledged that plaintiff demonstrated moderate right carpal tunnel  
9 syndrome via a February 2018 EMG and an April 2018 examination. Tr. 19 (citing Tr. 876, 886–  
10 87). Nevertheless, the ALJ noted that while plaintiff showed positive Durkan and Tinel's signs,  
11 he also had a negative Phalen's test and a negative ulnar nerve test. *Id.* (citing Tr. 876). The ALJ  
12 further noted that his physician prescribed a wrist brace to wear at night and discussed surgical  
13 options, but that plaintiff never followed up regarding surgery. *Id.* (citing Tr. 874, 877). The ALJ  
14 consequently did not identify right carpal tunnel syndrome as a severe impairment and did not  
15 specify physical RFC limitations related to right carpal tunnel syndrome except by restricting  
16 plaintiff to sedentary work and occasional reaching bilaterally. Tr. 17–18, 22.

17 If, as here, step two is resolved in a claimant's favor, any error in listing severe  
18 impairments can be harmful only if the ALJ erred in analyzing the later steps. *Buck v. Berryhill*,  
19 869 F.3d 1040, 1049 (9th Cir. 2017). The proper inquiry therefore is whether the ALJ failed to  
20 account for limitations stemming from plaintiff's right carpal tunnel syndrome by assessing  
21 sedentary work with a limit to occasional reaching bilaterally. On this count, any error made by  
22 the ALJ was harmless because plaintiff's sparse references to right carpal tunnel syndrome do  
23 not suggest physical limitations beyond those assessed in the RFC.

1 In his application for benefits plaintiff did *not* refer to any limitations in the functionality  
2 of his right arm, specifying that his disability stemmed from (1) depression; (2) back issues;  
3 (3) left arm issues; and (4) nerve pain. Tr. 314. Responding to how his conditions limited his  
4 ability to work, plaintiff referred to “[l]imited mobility and pain in left arm and wrist,” lower  
5 back pain, and “nerve pain from neck to tailbone.” Tr. 296. Contrary to the briefing, plaintiff did  
6 *not* testify that right carpal tunnel syndrome caused him to have difficulty gripping things and to  
7 drop things. Dkt. 9, at 3. Rather, plaintiff referred to those difficulties in specific response to the  
8 ALJ’s question about how the pain affected his *left* arm and *left* hand. Tr. 71. Plaintiff then  
9 testified that although his left hand and left arm pain was over 20 years old, his right carpal  
10 tunnel syndrome was diagnosed only a year before the hearing date. *Id.* Thus, the full extent of  
11 any limitations due to right carpal tunnel syndrome come from plaintiff’s statements in an April  
12 2018 medical visit in which he presented “for numbness, tingling involving the right hand” and  
13 “denie[d] pain” even though the condition had persisted for about three years, i.e., since  
14 approximately two years before his alleged onset date of disability. Tr. 629.

15 The Court finds that it was reasonable for the ALJ to infer that plaintiff’s right carpal  
16 tunnel syndrome was not a severe impairment given plaintiff himself did not refer to his right  
17 arm as affecting his ability to work, the lack of evidence of functional limitations stemming from  
18 right carpal tunnel syndrome, and symptoms from right tunnel syndrome preceding his alleged  
19 onset date by two years. The reasonableness of that inference is not undermined by plaintiff’s  
20 references to his physician discussing surgery to remedy right carpal tunnel syndrome that had  
21 affected him for three years despite bracing, Tr. 629, 632; to plaintiff speaking generally about  
22 having difficulty pouring coffee after detailing his problems using his *left* hand and *left* arm, Tr.  
23 71, 74; and to plaintiff’s checkbox response that he had difficulty “Using Hands” in the same

1 report in which his physical complaint was “[l]imited mobility and pain in left arm and wrist,”  
2 Tr. 296, 301. To the extent the ALJ erred by failing to find right carpal tunnel syndrome to be a  
3 severe impairment, that error was thus harmless.

4 Plaintiff has failed to demonstrate that the ALJ’s decision to find right carpal tunnel  
5 syndrome to be a non-severe impairment was unsupported by substantial evidence or the result  
6 of harmful legal error.

## 7 **2. Examining Psychologist Dr. Neims**

8 Plaintiff contends that the ALJ failed to provide specific and legitimate reasons for  
9 discounting the opinion of examining psychologist Dr. Neims. Dkt. 9, at 4–7. The Court  
10 disagrees because plaintiff cannot demonstrate how the assessed RFC conflicts with Dr. Neims’s  
11 opinion.

12 When considering medical opinions (filed on or after March 27, 2017), the ALJ considers  
13 the persuasiveness of the medical opinion using five factors (supportability, consistency,  
14 relationship with claimant, specialization, and other), but supportability and consistency are the  
15 two most important factors. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2), (c) (2017). The ALJ  
16 must explain in his decision how persuasive he finds a medical opinion(s) and/or a prior  
17 administrative medical finding(s) based on these two factors. 20 C.F.R. §§ 404.1520c(b),  
18 416.920c(b) (2017). The ALJ may, but is not required to, explain how he considered the other  
19 remaining factors, unless the ALJ finds that two or more medical opinions or prior administrative  
20 medical findings about the same issue are both equally well-supported and consistent with the  
21 record, but not identical. 20 C.F.R. §§ 404.1520c(b)(3), 416.920c(b)(3) (2017). And the new  
22 regulations eliminate the agency’s “treating source rule,” which gave special deference to  
23 treating doctors’ opinions. 82 Fed. Reg. at 5853.

1 The ALJ found Dr. Neims's opinion to be mildly persuasive because it was both  
2 supported by findings and consistent with other evidence in the record. Tr. 27, 379–82. Dr.  
3 Neims assessed plaintiff with only mild or moderate limitations in performing basic work  
4 activities. Tr. 380–81. Overall, Dr. Neims assessed limitations of moderate severity and noted  
5 that vocational training or services would minimize or eliminate barriers to employment. Tr. 381.

6 Although plaintiff contends that the ALJ failed to incorporate Dr. Neims's assessed  
7 limitations into the RFC, he is unable to specify what limitations would have led to changes in  
8 the RFC. The ALJ's RFC could be reasonably interpreted as incorporating all of Dr. Neims's  
9 assessed mild and moderate limitations by applying environmental, postural, and reaching  
10 restrictions as well as mental restrictions on the capacity to understand, remember, and apply  
11 detailed, but not complex, instructions and work that was not in a fast-paced environment. Tr. 22.  
12 Plaintiff cannot demonstrate error, let alone harmful error, without explaining how the ALJ's  
13 RFC assessment failed to account for the mild and moderate restrictions set forth by Dr. Neims.  
14 *See, e.g., Valentine v. Commissioner SSA*, 574 F.3d 685, 691–92 (9th Cir. 2009).

15 Plaintiff has failed to demonstrate that the ALJ's evaluation of Dr. Neims's opinion was  
16 unsupported by substantial evidence or the result of harmful legal error.

### 17 **3. Examining Psychiatrist Dr. DeLira**

18 Plaintiff contends that the ALJ failed to provide specific and legitimate reasons for  
19 discounting the opinion of examining psychiatrist Dr. DeLira. Dkt. 9, at 7–8. The Court disagrees  
20 because plaintiff has failed to demonstrate that the assessed RFC conflicts with Dr. DeLira's  
21 opinion.

22 The ALJ found Dr. DeLira's opinion persuasive because it was supported by findings and  
23 was generally consistent with the evidence. Tr. 27, 443–47. Dr. DeLira opined that plaintiff had

1 good ability to perform simple and repetitive tasks and had a fair ability to perform detailed and  
2 complex tasks and work activities on a consistent basis. Tr. 447. She opined that plaintiff had  
3 “poor to fair” ability to perform work duties at a sufficient pace and maintain regular attendance  
4 and complete a normal workday without interruptions. *Id.* She also opined that plaintiff had a  
5 good ability to interact with coworkers, superiors, and the public and to adapt to the usual  
6 stresses encountered in the workplace. *Id.*

7       There is no indication that the ALJ’s assessed RFC conflicted with Dr. DeLira’s opinion.  
8 When assessing RFC, the ALJ determines the most one can do despite limitations, not the least  
9 one can do. *See* 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). Dr. DeLira thus opined that plaintiff  
10 had up to a fair ability to maintain regular attendance, complete a normal workday without  
11 interruptions from symptoms, and work at a sufficient pace. A “moderate” mental limitation  
12 means a claimant’s “functioning in this area independently, appropriately, effectively, and on a  
13 sustained basis is fair.” 20 C.F.R. Pt. 404, subpt. P, app’x 1 § 12.00F(2)(c). This is consistent  
14 with Dr. DeLira opining that plaintiff’s overall prognosis was “fair to good.” Tr. 446.

15       Plaintiff has failed to demonstrate that the ALJ’s evaluation of Dr. Neims’s opinion was  
16 unsupported by substantial evidence or the result of harmful legal error.

#### 17 **4. Examining Orthopedic Surgeon Dr. Staker**

18       Plaintiff contends that the ALJ failed to discuss or evaluate the persuasiveness of  
19 opinions by examining orthopedic surgeon Lynn Staker, M.D. Dkt. 9, at 8–9. The Court agrees  
20 that the ALJ erred by failing to address Dr. Staker’s August 2017 medical opinions. The Court  
21 finds, however, that the error was harmless because the ALJ addressed the x-ray results on which  
22 Dr. Staker based his medical opinion and Dr. Staker’s observations and conclusions do not  
23 conflict with the ALJ’s evaluation of the medical evidence and the assessed RFC.

1 On August 10, 2017, Dr. Staker conducted a special examination of plaintiff for DSHS.  
2 Tr. 401–02. Dr. Staker noted that plaintiff’s left elbow and wrist problems stemmed from a 2000  
3 motorcycle accident. Tr. 401. On examination, plaintiff demonstrated a reduced range of motion  
4 and pain in his left wrist and left elbow. *Id.* On August 31, 2017, Dr. Staker conducted a follow-  
5 up examination in which he reviewed x-rays and noted moderate osteoarthritis in plaintiff’s left  
6 elbow and severe osteoarthritis in his left radial carpal joint. Tr. 916; *see* Tr. 918 (Aug. 17, 2017  
7 x-ray results). Dr. Staker concluded that plaintiff has “significant difficulty using his left hand”  
8 alongside reasons for chronic lower back pain and opined that plaintiff “will be limited to a  
9 sedentary level of work.” Tr. 917.

10 The Court finds that the ALJ should have reviewed Dr. Staker’s medical opinions. The  
11 Court thus rejects the Commissioner’s suggestion that Dr. Staker’s August 10 special  
12 examination and follow-up August 31 addendum did not constitute “medical opinions” in a  
13 technical sense under the regulations in force for cases filed after March 27, 2017, because the  
14 opinions did not adequately address “what you can still do despite your impairment(s) and  
15 whether you have one or more impairment-related limitations or restrictions.” Dkt. 12, at 8  
16 (citing 20 C.F.R. § 404.1513(a)(2)). The Commissioner asserts that Dr. Staker’s opinions  
17 constituted “other medical evidence” because they are neither “medical opinions” nor “objective  
18 medical evidence” and therefore qualify as delineated forms of medical information (e.g.,  
19 medical history, clinical findings, prognosis) that need not be explicitly addressed in an ALJ’s  
20 decision. Dkt. 12, at 9 (citing 20 C.F.R. § 404.1513(a)(3)). This assertion is unpersuasive  
21 because by definition Dr. Staker’s opinions count both as “medical opinions” and as “objective  
22 medical evidence.” Although the Commissioner is correct that Dr. Staker’s opinions are broad  
23 and conclusory about plaintiff’s capacity to perform only sedentary work due to, among other



1 reasons, limited range of motion and pain, such concerns go to the weight the opinions should be  
2 given, not to whether medical opinions directly solicited by DSHS constitute “medical opinions”  
3 at all. Moreover, it is undisputed that Dr. Staker also created “objective medical evidence” by  
4 conducting a physical examination of plaintiff and recording the results, ordering x-rays, and  
5 reviewing the x-ray results.

6 Nonetheless, the ALJ’s error in declining to explicitly evaluate Dr. Staker’s opinions is  
7 harmless because the ALJ adequately evaluated the medical evidence regarding plaintiff’s left  
8 elbow and left wrist limitations, including the x-rays that Dr. Staker ordered, and the RFC of  
9 sedentary work with additional physical limitations, including overhead reaching limitations,  
10 does not conflict with Dr. Staker’s conclusion that plaintiff was limited to sedentary work. Tr.  
11 23, 25 (citing, *inter alia*, Tr. 876 (April 2018 orthopedic surgeon noting hand and wrist were  
12 stable bilaterally and sensation to light touch over the axillary, lateral antebrachial, radial, ulnar  
13 and median distributions were intact bilateral sides; normal thenar and extrinsic motor strength  
14 bilaterally; normal wrist and finger extension bilaterally; and the absence of thenar and intrinsic  
15 atrophy), 918 (August 17, 2017 findings and conclusion regarding x-ray of left elbow and left  
16 wrist by David S. Henley, M.D.)). Aside from contesting the ALJ’s treatment of his symptom  
17 testimony, plaintiff has not challenged the ALJ’s evaluation of the medical evidence that  
18 undermines plaintiff’s allegedly disabling left elbow and left wrist pain and functionality.

19 Plaintiff has failed to demonstrate that the ALJ’s failure to explicitly evaluate Dr.  
20 Staker’s medical opinions constituted harmful error.

## 21 **5. Non-Examining Opinion of Physician Dr. Leinenbach**

22 Plaintiff contends that the ALJ erroneously departed from the opinion of non-examining,  
23 reviewing physician Dr. Leinenbach by finding that opinion to be persuasive and yet not

1 properly accounting for any manipulative limitations in the RFC based on plaintiff's left elbow  
2 and left wrist impairments. Dkt. 9, at 9–10. The Court disagrees because the ALJ accounted for  
3 the moderate manipulative limitations in the RFC assessment based on plaintiff's left elbow and  
4 left wrist issues.

5 In his September 2017 primarily checkbox opinion, Dr. Leinenbach reviewed the 2016  
6 and 2017 medical reports from the Everett Clinic, Dr. Neims, and Dr. Staker and opined that  
7 plaintiff had moderate limitations regarding his left elbow and left wrist, had moderate  
8 restrictions in gross or fine motor skills, had a moderate limitation in lifting a maximum of 10  
9 pounds, and no/mild restriction in frequently lifting or carrying small articles and sitting for most  
10 of the day while walking or standing for brief periods. Tr. 927, 929. Dr. Leinenbach therefore  
11 concluded that plaintiff was moderately limited with respect to environmental/non-exertional  
12 restrictions, postural restrictions, and gross or fine motor skill restrictions, which meant: "A  
13 sedentary work level is reasonable. The claimant should be able to lift 10 pounds without  
14 limitation." Tr. 930. The ALJ found Dr. Leinenbach's opinion to be persuasive and found that, in  
15 addition to including environmental and postural restrictions in the RFC, "an overhead reaching  
16 limitation is warranted" because "the medical evidence shows that the claimant had issues with  
17 his left elbow and left wrist." Tr. 25–26. The ALJ's evaluation of Dr. Leinenbach's opinion was  
18 consistent with the assessed RFC. Although plaintiff seeks more specific manipulative  
19 restrictions than Dr. Leinenbach actually opined, it was reasonable for the ALJ to determine that  
20 Dr. Leinenbach's opinion supported an RFC of sedentary work with a limitation on overhead  
21 reaching to account for plaintiff's left elbow and left wrist problems.

22 Plaintiff has failed to demonstrate that the ALJ's evaluation of Dr. Leinenbach's opinion  
23 was unsupported by substantial evidence or the result of harmful legal error.

## 6. Plaintiff's Symptom Testimony

Plaintiff contends that the ALJ failed to provide specific, clear and convincing reasons for discounting his symptom allegations. The Court disagrees because the ALJ reasonably found that the evidence supported significant limitations, but not to the extent of plaintiff's allegations.

That a claimant's testimony is not fully corroborated by the objective medical findings, in and of itself, is not a clear and convincing reason for rejecting it. *See Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir. 1996). "At the same time, the ALJ is not required to believe every allegation of disabling pain, or else disability benefits would be available for the asking, a result plainly contrary to 42 U.S.C. § 423(d)(5)(A)." *Molina*, 674 F.3d at 1112 (internal marks and citation omitted). In evaluating a claimant's testimony, the ALJ may use "ordinary techniques of credibility evaluation," such as inconsistencies either in the claimant's testimony or between the testimony and the claimant's conduct, unexplained or inadequately explained failure to seek treatment or to follow a prescribed course of treatment, and whether the claimant engages in daily activities inconsistent with the alleged symptoms. *Id.* (internal marks and citations omitted). Effective March 28, 2016, Social Security Ruling ("SSR") 16-3p, eliminates previously applicable SSR references to "credibility," clarifies that "subjective symptom evaluation is not an examination of an individual's character," and requires the ALJ to consider all of the evidence in an individual's record when evaluating the intensity and persistence of symptoms. *See SSR 16-3p, available at* 2016 WL 1119029, at \*1–\*2. The ALJ must examine "the entire case record, including the objective medical evidence; an individual's statements about the intensity, persistence, and limiting effects of symptoms; statements and other information provided by medical sources and other persons; and any other relevant evidence in the individual's case

1 record.” *Id.* at \*4. While a claimant need not “vegetate in a dark room” in order to be eligible for  
2 benefits, the ALJ may discredit a claimant’s testimony when the claimant reports participation in  
3 everyday activities indicating capacities that are transferable to a work setting. *Molina*, 674 F.3d  
4 at 1112–13 (internal marks and citations omitted). “Even where those activities suggest some  
5 difficulty functioning, they may be grounds for discrediting the claimant’s testimony to the extent  
6 that they contradict claims of a totally debilitating impairment.” *Id.* at 1113.

7       The ALJ discounted plaintiff’s symptom allegations because (1) they were inconsistent  
8 with his daily activities; (2) he did not comply with treatment recommendations; and (3) they  
9 conflicted with the objective medical evidence. Tr. 22–28. These were clear and convincing  
10 reasons for discounting plaintiff’s symptom testimony and his alternative interpretation of the  
11 evidence, while plausible, cannot take the place of the ALJ’s reasonable interpretation. *See*  
12 *Batson v. Commissioner of SSA*, 359 F.3d 1190, 1196 (9th Cir. 2004).

13       First, the ALJ reasonably discounted plaintiff’s symptom allegations as inconsistent with  
14 his daily activities. Tr. 25. Plaintiff testified that his “body is like a symphony of pain” so  
15 excruciating that sometimes he wanted to cut off his left arm and so debilitating that even basic  
16 upkeep of his home and himself “takes a ridiculous amount of time” Tr. 49, 66, 71. In contrast,  
17 the ALJ noted that plaintiff testified that he can perform activities of daily living, including  
18 household chores, taking care of pets, going out his boat, and performing self-care, which  
19 supported an RFC of sedentary work with additional postural, environmental, and overhead  
20 reaching limitations. Tr. 25. Plaintiff was able to perform chores, doing half of the household  
21 duties while his wife did the other half, Tr. 59; he could go shopping for up to two hours and ride  
22 his motorcycle, Tr. 299; and even in the absence of other hobbies, he continued to go out on his  
23 boat. Tr. 60–62. Even when a claimant’s activities “suggest some difficulty functioning, they

1 may be grounds for discrediting the claimant's testimony to the extent that they contradict claims  
2 of a totally debilitating impairment." *Molina*, 674 F.3d at 1113.

3 Second, the ALJ discounted plaintiff's symptom testimony based on his failure to comply  
4 with treatment recommendations. Tr. 24. The ALJ noted that plaintiff received a referral for  
5 routine physical therapy in February 2019 but there was no indication of a follow-up. *Id.* (citing  
6 Tr. 529). The ALJ also noted that plaintiff was recommended for a medication management plan  
7 for fibromyalgia in November 2018, but he had not started taking the medication in December  
8 2018, while by March 2019 he had stopped his medication management plan and was starting a  
9 new one. *Id.* (citing Tr. 896). Moreover, despite plaintiff's claims of debilitating pain, and his  
10 taking of other prescribed medications, plaintiff testified to relying for pain relief on over-the-  
11 counter Naproxen, marijuana, and simply "[d]ealing with it" due to a phobia of pills. Tr. 49–50,  
12 73. An ALJ may discredit a claimant's allegations based on "unexplained, or inadequately  
13 explained, failure to seek treatment or follow a prescribed course of treatment." *Fair v. Bowen*,  
14 885 F.2d 597, 603–04 (9th Cir. 1989).

15 Third, the ALJ cited a number of ways in which the objective medical evidence  
16 contradicted the severity of plaintiff's symptom testimony. Tr. 23–24. In contrast to plaintiff's  
17 claims that he could barely hold a coffee pot to pour a cup of coffee, the ALJ noted that plaintiff  
18 had normal motor strength, sensation, and reflexes in his arms and hands. Tr. 25; *compare* Tr. 74  
19 *with* Tr. 876–77. The ALJ noted that the record regularly showed that plaintiff had a normal gait  
20 and appeared well during examination without acute distress. Tr. 23–24; *see* Tr. 433, 533, 562,  
21 588, 631, 705, 876, 881, 896. Although it is improper to reject symptom testimony solely  
22 because it is not corroborated by objective medical evidence, medical evidence remains a  
23

1 relevant factor in determining the severity of the alleged symptoms. *See Rollins v. Massanari*,  
2 261 F.3d 853, 857 (9th Cir. 2001); 20 C.F.R. § 404.1529(c)(2).

3 Plaintiff has failed to demonstrate that the ALJ's evaluation of his symptom testimony  
4 was unsupported by substantial evidence or the result of harmful legal error.

5 **CONCLUSION**

6 For the foregoing reasons, the Commissioner's decision is **AFFIRMED** and this case is  
7 **DISMISSED** with prejudice.

8 DATED this 7th day of April, 2021.

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BRIAN A. TSUCHIDA  
United States Magistrate Judge